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Filing date: **07/18/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91214086
Party	Plaintiff Starbuzz Tobacco, Inc.
Correspondence Address	NATU J PATEL THE PATEL LAW FIRM PC 22952 MILL CREEK DRIVE LAGUNA HILLS, CA 92653 UNITED STATES NPatel@thePatelLawFirm.com, MUy@thePatelLawFirm.com, JChuan@thePatelLawFirm.com, dngai@thepatellawfirm.com, kjain@thepatellawfirm.com
Submission	Motion to Compel Discovery
Filer's Name	Natu J. Patel
Filer's e-mail	NPatel@ThePatelLawFirm.com, KJain@ThePatelLawFirm.com, DN-gai@ThePatelLawFirm.com, MUy@ThePatelLawFirm.com, JCriss-man@ThePatelLawFirm.com
Signature	/natupatel/
Date	07/18/2016
Attachments	SB - Motion to Complel RFP 071816.pdf(447938 bytes) SB - Decl of K. Jain ISO MTC RFP 071816.pdf(1691937 bytes)

**IN THE UNITED STATES PATENT AND TRADE MARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 85/774,314

Mark: MYST

Filed: November 8, 2012

Published: November 19, 2013

STARBUZZ TOBACCO, INC.,

Opposer,

vs.

PHILLIP MELNICK,

Applicant.

OPPOSITION NO: 91214086

**NOTICE OF MOTION AND MOTION
TO COMPEL APPLICANT PHILIP
MELNICK'S RESPONSES TO OPPOSER
STARBUZZ TOBACCO'S REQUESTS
FOR PRODUCTION OF DOCUMENTS
(SET ONE); DECLARATION OF KUNAL
JAIN IN SUPPORT THEREOF**

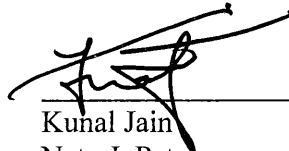
TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT Opposer, Starbuzz Tobacco, Inc. ("Starbuzz"), will move to compel Applicant, Philip Melnick ("Applicant") to provide responses to Starbuzz's Request for Production of Documents (Set One). This motion is made pursuant to Federal Rule of Civil Procedure 34, Trademark Trial and Appeal Board Manual of Procedure ("TBMP") § 406.04(a), and on the ground that Applicant failed to serve any responses.

This motion is based upon this Notice, the attached Memorandum of Points and Authorities, the Declaration of Kunal Jain, the pleadings, records and files in this action, and upon such other documentary evidence as requested by the Trademark Trial and Appeal Board

Dated: July 18, 2016

Respectfully Submitted,
THE PATEL LAW FIRM, P.C.



Kunal Jain
Natu J. Patel
Daniel H. Ngai
Attorneys for Starbuzz
Starbuzz Tobacco, Inc.

POINTS AND AUTHORITIES

BRIEF STATEMENT OF SALIENT FACTS

On November 19, 2013, Applicant, Philip Melnick's ("Applicant") § 1(b) application for the "MYST" mark was published for opposition by the United States Patent and Trademark Office ("USPTO"). On December 18, 2013, Starbuzz Tobacco, Inc., ("Starbuzz") filed an Opposition to the "MYST" application based on Starbuzz's "MIST" related registrations in the same international class. Starbuzz now brings this motion to compel responses to its Requests for Production of Documents (Set One) propounded in this proceeding.

DISCOVERY DISPUTE

Starbuzz served Applicant with Production of Documents (Set One) ("RFP") on June 6, 2016. See the Declaration of Kunal Jain ("Jain Decl.") ¶ 1, **Exhibit A**, concurrently filed herewith. Pursuant to the Trademark Trial and Appeal Board Manual of Procedure ("TBMP") § 403.03, Applicant's responses to Starbuzz's RFPs were due within 30 days (allowing 5 extra days for mail service), by July 11, 2016.

On July 13, 2016, after not receiving any responses or objections to the RFPs, Starbuzz sent an email to Applicant demanding, among other things, that Applicant serve responses without objections by July 15, 2016. Jain Decl. ¶ 2, **Exhibit B**. As of today, Starbuzz has not received responses or objections to the RFPs nor any response to Starbuzz's July 13, 2016 email. Jain Decl. ¶ 3.

Since Applicant Has Failed to Respond to the RFPs, Starbuzz Respectfully Requests the Board to Compel Applicant's Responses.

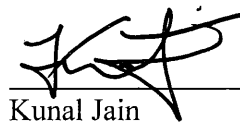
Federal Rule of Civil Procedure 34 and TBMP § 406.04(a) provide that responses to requests for production must be served within 30 days after the date of service of the requests. Additionally, a party which fails to respond to requests for production during the time allowed

therefor, and which is unable to show that its failure was the result of excusable neglect, may be found, on motion to compel filed by the propounding party, to have forfeited its right to object to the requests on their merits. *No Fear Inc. v. Rule*, 54 USPQ2d 1551, 1555 (TTAB 2000).

Applicant failed to respond to Starbuzz's June 6, 2016 RFPs by the July 11, 2016 statutory deadline. Moreover, Applicant completely ignored Starbuzz's subsequent July 13, 2016 meet and confer email, and provided absolutely no excuse for failing to respond or otherwise object to Starbuzz's RFPs. Jain Decl. ¶¶ 2-3. Consequently, pursuant to Rule 34 of the Federal Rules of Civil Procedure and TBMP § 406.04(a), Starbuzz respectfully moves the Board for an order to compel Applicant's responses to Starbuzz's RFPs without objection.

Dated: July 18, 2016

Respectfully Submitted,
The Patel Law Firm, P.C.



Kunal Jain
Natu J. Patel
Daniel H. Ngai
Attorneys for Starbuzz
Starbuzz Tobacco, Inc.

The Patel Law Firm, P.C.
22952 Mill Creek Drive
Laguna Hills, CA 92653
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Facsimile: (949) 955-1877
NPatel@thePatelLawFirm.com
NJP/kj

CERTIFICATE OF SERVICE

I certify that a copy of this **NOTICE OF MOTION AND MOTION TO COMPEL APPLICANT'S RESPONSES TO OPPOSER'S REQUESTS FOR PRODOUCTION OF DOCUMENTS (SET ONE)** is being served via U.S. mail, postage prepaid, on this the 18th day of July, 2016, to the following:

Applicant's Attorney/Representative:

PHILIP MELNICK
PO BOX 131822
STATEN ISLAND, NY 10313
UNITED STATES
philipmelnick@aol.com



Corey Dufek

**IN THE UNITED STATES PATENT AND TRADE MARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 85/774,314

Mark: MYST

Filed: November 8, 2012

Published: November 19, 2013

STARBUZZ TOBACCO, INC.,

Opposer,

vs.

PHILLIP MELNICK,

Applicant.

OPPOSITION NO: 91214086

**DECLARATION OF KUNAL JAIN IN
SUPPORT OF MOTION TO COMPEL
APPLICANT'S RESPONSES TO
REGISTRANT STARBUZZ TOBACCO,
INC.'S REQUEST FOR PRODUCTION
OF DOCUMENTS (SET ONE)**

I, Kunal Jain, declare that I am the attorney of record for Registrant, Starbuzz Tobacco, Inc., ("Starbuzz"), in the above captioned case. I am making this declaration in support of Starbuzz's Motion to Compel Applicant Philip Melnick's ("Applicant") Responses, to Opposer Starbuzz Tobacco, Inc.'s Requests for Production of Documents (Set One).

1. On June 6, 2016, Starbuzz propounded Requests for Production of Documents (Set One) ("RFPs") to Applicant, which were served by First-Class and electronic mail, to Applicant. True and correct copies of Registrant's RFPs, proof of service, and USPS Priority Mail receipt to Applicant's listed address are collectively attached hereto as **Exhibit A**.

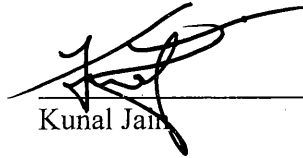
2. On July 13, 2016, after not receiving any responses or objections to its RFPs, Starbuzz sent Applicant an e-mail demanding, among other things, that Applicant serve

responses to Starbuzz's RFPs without objections by July 18, 2016. A true and correct copy of the e-mail sent to Applicant demanding responses is attached hereto as **Exhibit B.**

3. As of the date of this declaration, July 18, 2016, Starbuzz has not received Applicant's responses to its RFPs, nor any response to the July 13, 2016 e-mail.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 18th day of July 2016 at Laguna Hills, California.


Kunal Jain

CERTIFICATE OF SERVICE

I certify that a copy of this **DECLARATION OF KUNAL JAIN IN SUPPORT OF MOTION TO COMPEL APPLICANT'S RESPONSES TO OPPOSER STARBUZZ TOBACCO, INC.'S REQUEST FOR PRODUCTION OF DOCUMENTS (SET ONE)** is being served via U.S. mail, postage prepaid, on this the 18th day of July, 2016, to the following:

Applicant's Attorney/Representative:

PHILIP MELNICK
PO BOX 131822
STATEN ISLAND, NY 10313
UNITED STATES
philipmelnick@aol.com



Korey Dufek

Exhibit A

**IN THE UNITED STATES PATENT AND TRADE MARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 85/774,314

Mark: *MYST*

Filed: *November 8, 2012*

Published: *November 19, 2013*

STARBUZZ TOBACCO, INC.,

Opposer,

vs.

PHILLIP MELNICK,

Applicant.

)
)
)
) **OPPOSITION NO: 91214086**
)

) **OPPOSER STARBUZZ TOBACCO,**
) **INC.'S REQUESTS FOR PRODUCTION**
) **OF DOCUMENTS TO APPLICANT**
) **PHILIP MELNICK (SET ONE)**
)
)
)
)

PROPOUNDING PARTY: **STARBUZZ TOBACCO, INC.**

RESPONDING PARTY: **PHILIP MELNICK**

SET NUMBER: **ONE**

TO APPLICANT PHILIP MELNICK AND HIS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that pursuant to Federal Rules of Civil Procedure 34,

Opposer, Starbuzz Tobacco, Inc., submits the following Requests for Production of Documents to Applicant, Philip Melnick, to be responded to fully within thirty (30) days of service thereto.

DEFINITIONS

Unless the context clearly requires otherwise, the following definitions and instructions shall apply to these requests and all other discovery requests in this action unless otherwise provided:

1. As used herein, the term “and” includes “or,” and the term “or” includes “and.”
2. “Applicant,” “Melnick,” “You,” or “Your” (or any derivative thereof) shall refer to Applicant Philip Melnick, including any companies, subsidiaries, affiliates, employees, agents, officers, directors, attorneys, contractors, accountants, consultants, investigators, predecessors, and successors-in-interests and all persons acting or purporting to act on Applicant’s behalf.
3. “Opposer” or “Starbuzz” shall refer to Starbuzz Tobacco, Inc., a California corporation, and Opposer in the above-captioned matter.
4. “Applicant’s Mark” shall refer to the words “MYST”, which You are currently using or intend to use in connection with Your electronic cigarette products.
5. “BLUE MIST” shall refer to Opposer’s registered trademark “BLUE MIST” (Registration No. 3,619,407).
6. “CITRUS MIST” shall refer to Opposer’s registered trademark “CITRUS MIST” (Registration No. 3,695,500).
7. “PEACH MIST” shall refer to Opposer’s registered trademark “PEACH MIST” (Registration No. 4,287,968).
8. “TROPICAL MIST” shall refer to Opposer’s registered trademark “TROPICAL MIST” (Registration No. 4,196,957).
9. “Opposer’s Marks” shall individually and collectively refer to Opposer’s

registered trademarks “BLUE MIST” (Registration No. 3,619,407), “CITRUS MIST” (Registration No. 3,695,500), “PEACH MIST” (Registration No. 4,287,968), “TROPICAL MIST” (Registration No. 4,196,957).

10. “USPTO” shall refer the United States Patent and Trademark Office.

11. “Application” shall refer to Your USPTO application for the registration of Applicant’s Mark “MYST” (Serial No. 85/774,314).

12. “Opposition” shall refer to the Notice of Opposition filed by Opposer with respect to Your Application (Opposition No. 91214086).

13. “Answer” shall refer to the Answer to the Opposition, which was filed on or about July 30, 2014.

14. “Products” shall refer to the electronic cigarette products which You are currently selling or intend to sell bearing Applicant’s Mark.

15. “Channels of Trade” shall refer to the methods by which You sell products, including, but not limited to, via mail order, internet, facsimile and telephone sales, use of agents to sell directly to customers on Your behalf, and distribution of products to retailers.

16. “Media Channels” shall refer to any and all means or methods by which You advertise, market or offer products to the public for sale, including, without limitation, use of direct mail, the telephone, journals, magazines, television, the internet, retail locations, and stores.

17. “Document(s)” means any writing or recording as defined in Rule 1001 of the Federal Rules of Evidence, including but not limited to, any written, printed, typed, recorded, or other graphic matter of any kind or nature and shall include, without limitation, all writings, drawings, graphs, charts, books, technical materials, photographs, microfilm, magnetic media,

computer records, electronically stored information, and other media from which information can be obtained. This will include, without limitation, all drafts of such documents, by whatever means made, specifically including, without limitation, initials, stamped indicia, comments, or notations not a part of the original text or photographic reproduction thereof, as a separate document. “Document” shall also include any data compilation from which information can be obtained or translated if necessary by You through detection devices into reasonably usable form.

18. When referring to a person, to “Identify” means to give, to the extent known, the person’s full name, present or last known address, and, when referring to a natural person, the present or last known place of employment and e-mail address. When referring to a company, to “Identify” means to give, to the extent known, the company’s full corporate name, a brief description of the general nature of the business, its state of incorporation, the address and principal place of business; and the identity of the officers or other persons having knowledge of the matter with respect to which the company has been identified. Once a person or company has been identified in accordance with this subparagraph, only the name of that person or company need be listed in response to subsequent discovery requesting the identification of that person or company.

19. When referring to documents, “to “Identify” means to give, to the extent known, the (a) type of document; (b) general subject matter; (c) date of the document; and (d) author(s), addressee(s), and recipient(s).

20. “Person” includes, without limitation, any natural person, proprietorship, corporation, partnership, trust, joint venture, association, organization, business entity or governmental agency.

21. “Describe,” “Refer,” “Relate,” “Relating To” and “Relates To” mean, without limitation, relating to, regarding, constituting, concerning, mentioning, referring to, describing, summarizing, evidencing, listing, relevant to, demonstrating, or tending to prove, disprove, or explain.

22. “Communication” means any transfer of information of any kind, orally, in writing, or by any other manner, at any time or place, and under any circumstances whatsoever and shall include, but is not limited to, the following: contracts or agreements; drawings or sketches; invoices, orders, or acknowledgements; diaries or reports; forecasts or appraisals; memoranda of telephonic or in person communications by or with any person; other memoranda, letters, telegrams, telexes, or cables prepared, drafted, received or sent; tapes transcripts, or recordings; photographs, pictures, or films; computer programs, computer data, or computer printouts; or graphic, symbolic, recorded, or written materials of any nature whatsoever.

23. POSSESSION, CUSTODY OR CONTROL. Each request herein requires production of any and all documents in Your possession, custody, or control. A document is deemed to be in Your possession, custody, or control if the document is in Your physical custody, or in the physical custody of any other person and You own the requested document in whole or in part; has a right by contract, statute or otherwise to use, inspect, examine or copy the requested document on any terms; has an understanding, whether express or implied, that You may use, inspect, examine or copy the requested document on any terms; has as a practical

matter, been able to use, inspect, examine or copy the requested document when plaintiff has sought to do so; or is able to lawfully use, inspect, examine or copy the requested documents. Documents within Your possession, custody, or control include, but are not limited to, documents that are in the custody of Your attorney or other agents.

24. PRIVILEGE ASSERTED. Where a request calls for the production of a document as to which a claim of privilege is asserted, please set forth the following with respect to each document:

- (a) The type of document;
- (b) The date of the document;
- (c) The name, business address and present position of the author(s) or originator(s) of the document;
- (d) The position of the author(s) or originator(s) of the document at the time the document was prepared;
- (e) The names and address of all persons or entities who have received a copy of the document;
- (f) The position of each recipient of the document at the time the document was prepared and at the time the document was received;
- (g) A general description of the subject matter of the document;
- (h) All information contained in the document to which the claimed privilege is not asserted;

(i) All information contained in the document to which the claimed privilege is not asserted;

(j) If the protection of the work product doctrine is asserted, the proceeding in anticipation of which the document was prepared.

25. The use of the singular includes the plural, and vice versa.

26. The use of one gender includes all others, appropriate in context.

INSTRUCTIONS

1. In the event any communication or information responsive to any of the following document requests are withheld from production on the basis of privilege, IDENTIFY each person who participated in or had knowledge of the communication or other information and provide the following:

- a. The privilege or protection that You claim precludes disclosure;
- b. The subject matter of the communication or information (without revealing the content as to which privilege is claimed); and
- c. Any additional facts on which You base Your claim of privilege or protection.

2. When a request requires You to provide information, You are required to supply all information known by or available to You or Your employees, agents, representative, attorneys and experts. If You cannot completely produce the document request after making diligent efforts to do so, please so state.

3. If You later discover additional responsive information, You are obligated to amend Your responses pursuant to Federal Rule of Civil Procedure 26(e).

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

Produce all Documents that refer or relate to Your decision to use or adopt Applicant's Mark.

REQUEST FOR PRODUCTION NO. 2:

Produce all Documents that refer or relate to any attempt(s) to register Applicant's Mark with the USPTO or any state agency.

REQUEST FOR PRODUCTION NO. 3:

Produce all Documents relating to Your knowledge of Opposer, Opposer's Marks, and Opposer's tobacco products, before You filed the Application.

REQUEST FOR PRODUCTION NO. 4:

Produce all Documents sufficient to Identify each Product You sold bearing Applicant's Mark.

REQUEST FOR PRODUCTION NO. 5:

Produce all Documents sufficient to Identify each Product You intend to sell bearing Applicant's Mark.

REQUEST FOR PRODUCTION NO. 6:

Produce all Documents related to any studies or analyses regarding the sales, advertising, marketing, success, or profitability of Your Products.

REQUEST FOR PRODUCTION NO. 7:

Produce all Documents relating to any Communications between You and any third party regarding this Opposition.

REQUEST FOR PRODUCTION NO. 8:

Produce all Documents relating to any Communications between You and any third party regarding Your decision to use Applicant's Mark.

REQUEST FOR PRODUCTION NO. 9:

Produce all Documents relating to Your decision to use Applicant's Mark including, but not limited to, search reports, market surveys, emails, and interoffice memoranda.

REQUEST FOR PRODUCTION NO. 10:

Produce all Documents relating to the marketing, advertisement, and promotion of Your Products.

REQUEST FOR PRODUCTION NO. 11:

Produce all Documents displaying the manner in which the Applicant's Mark is used in commerce.

REQUEST FOR PRODUCTION NO. 12:

Produce Documents sufficient to Identify the Media Channels used to sell or advertise Your Products in the United States during the period from October 1, 2012 to the present.

REQUEST FOR PRODUCTION NO. 13:

Produce Documents sufficient to Identify the Channels of Trade in the United States used to sell Your Products during the period from October 1, 2012 to the present.

REQUEST FOR PRODUCTION NO. 14:

Produce Documents sufficient to Identify the names, addresses, and contact information for all direct customers, distributors, retail stores, Internet sites, wholesalers, and Persons in the United States through which Your Products were sold during the period from October 1, 2012 to the present.

REQUEST FOR PRODUCTION NO. 15:

Produce all agreements Relating to the development and manufacture of Your Products sold or intended to be sold.

REQUEST FOR PRODUCTION NO. 18:

Produce all agreements Relating to the distribution of Your Products in the United States.

REQUEST FOR PRODUCTION NO. 19:

Produce all Documents evidencing sales of Your Products in the United States prior to October 1, 2012.

REQUEST FOR PRODUCTION NO. 20:

Produce all Documents evidencing the total quarterly sales of Your Products in the United States between October 1, 2012 and present.

REQUEST FOR PRODUCTION NO. 21:

Produce all Documents in support of Your claim that no other person, firm, corporation, or association has the right to use Applicant's Mark in commerce.

REQUEST FOR PRODUCTION NO. 22:

Produce all Documents supporting Your first affirmative defense in the Answer that Opposer's claims are barred because Opposer is misusing its trademarks and the trademark registration process to prevent the legitimate use and registration of other trademarks.

REQUEST FOR PRODUCTION NO. 23:

Produce all Documents supporting Your second affirmative defense in the Answer that Opposer's claims are barred by the doctrine of unclean hands.

REQUEST FOR PRODUCTION NO. 24:

Produce all Documents supporting Your third affirmative defense in the Answer that

Opposer's claims are barred since Opposer fraudulently obtained its federal trademark registrations.

REQUEST FOR PRODUCTION NO. 25:

Produce all Documents supporting Your fourth affirmative defense in the Answer that Opposer's claims are barred since Opposer is not likely to suffer injury, nor is there a likelihood of injury.

REQUEST FOR PRODUCTION NO. 26:

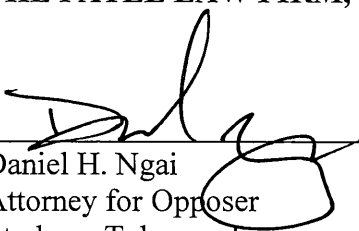
Produce all Documents supporting Your fifth affirmative defense in the Answer that Opposer's claims are barred since consumers are not likely to be confused as to the source of Opposer's and Applicant's products.

REQUEST FOR PRODUCTION NO. 27:

Produce all Documents supporting Your sixth affirmative defense in the Answer that Opposer's claims are barred since third parties have used the term "mist" for tobacco products prior to Opposer's first use of the mark.

DATED: June 6, 2016

Respectfully Submitted,
THE PATEL LAW FIRM, P.C.


Daniel H. Ngai
Attorney for Opposer
Starbuzz Tobacco, Inc.


The Patel Law Firm, P.C.
22952 Mill Creek Drive
Laguna Hills, CA 92653
Telephone: (949) 955-1077
Facsimile: (949) 955-1877
DNgai@thePatelLawFirm.com

CERTIFICATE OF SERVICE

I certify that a copy of this **OPPOSER STARBUZZ TOBACCO, INC.'S REQUEST FOR PRODUCTION OF DOCUMENTS TO APPLICANT PHILIP MELNICK (SET ONE)** is being served U.S. mail, postage prepaid, and electronic mail on this the 6th day of June, 2016, to the following:

Applicant's Attorney/Representative:

PHILIP MELNICK
PO BOX 131822
STATEN ISLAND, NY 10313
UNITED STATES
philipmelnick@aol.com



Mark Uy



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Delivered

Updated Delivery Day: Thursday, June 9, 2016 ?

Product & Tracking Information

Postal Product:
Priority Mail 3-Day™Features:
Insured

Available Actions

[Text Updates](#)[Email Updates](#)

DATE & TIME	STATUS OF ITEM	LOCATION
June 29, 2016 , 11:49 am	Delivered, Front Desk/Reception	PORT ORANGE, FL 32128
Your item was delivered to the front desk or reception area at 11:49 am on June 29, 2016 in PORT ORANGE, FL 32128.		
June 29, 2016 , 7:43 am	Arrived at Unit	PORT ORANGE, FL 32127
June 29, 2016 , 4:18 am	Departed USPS Facility	ORLANDO, FL 32824
June 28, 2016 , 9:59 pm	Arrived at USPS Facility	ORLANDO, FL 32824
June 27, 2016 , 10:36 am	Departed USPS Destination Facility	METRO, NY
June 27, 2016 , 10:35 am	Arrived at USPS Destination Facility	METRO, NY
June 25, 2016 , 9:42 pm	Departed USPS Destination Facility	KEARNY, NJ 07032
June 25, 2016 , 9:41 pm	Arrived at USPS Destination Facility	KEARNY, NJ 07032
June 9, 2016 , 9:44 am	Sorting Complete	STATEN ISLAND, NY 10313
June 9, 2016 , 5:34 am	Available for Pickup	STATEN ISLAND, NY 10313
June 9, 2016 , 1:58 am	Departed USPS Destination Facility	METRO, NY
June 9, 2016 , 1:50 am	Arrived at USPS Destination Facility	METRO, NY
June 7, 2016 , 8:51 pm	Departed USPS Origin Facility	ANAHEIM, CA 92899
June 7, 2016 , 8:49 pm	Arrived at USPS Origin Facility	ANAHEIM, CA 92899
June 7, 2016 , 7:34 pm	Accepted at USPS Origin Facility	LAGUNA HILLS, CA 92653

June 7, 2016

Pre-Shipment Info Sent to
USPS

Track Another Package

Tracking (or receipt) number

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Account # 36069569

Label Details

Label Number:[9405803699300258549061](#)**Terms****Acceptance Cutoff:** 06/06/2016 5:30 PM**Acceptance Time:** 06/07/2016 7:34 PM**Scheduled Date:** 06/10/2016 12:00 AM**Delivery Status:** Delivered, Front Desk/Reception
2016-06-09 05:34:00.0**Label Actions**[USPS Tracking®](#)[Ship Again](#)[Request A Refund](#)**Need help**[File an insurance claim](#)**Return Address:**NATU J PATEL
THE PATEL LAW FIRM, P.C.
22952 MILL CREEK DR STE A
LAGUNA HILLS, CA 92653-1214
muy@thepatellawfirm.com**Delivery Address:**PHILLIP MELNICK
PO BOX 131822
STATEN ISLAND, NY 10313-1822**Package:**Ship Date: 06/06/16
Value: \$1.00
From: 92653**Service:**Priority Mail® 3-Day
Flat Rate Envelope
USPS Tracking®**Transaction Number:** [376036965](#)**Transaction Type:** Label**Payment Method:** VISA-0901**Payment Status:** Account ChargedPostage Cost \$6.45
USPS Tracking® Free**Label Total:** \$6.45**Order Total:** \$6.45**Timestamp****Message**

06-06-2016 18:05:51	LABEL PRINTED
06-06-2016 18:05:47	Getting Payment
06-06-2016 18:05:36	Setting Payment

[Back](#)

Exhibit B

Kunal Jain

From: Daniel Ngai
Sent: Wednesday, July 13, 2016 4:52 PM
To: PhilipMelnick@aol.com
Cc: Natu Patel; Kunal Jain; Mark Uy
Subject: Re: Starbuzz v. Melnick - RFP, RFA and Interrogatories (TTAB Opposition No. 91214086)

Dear Mr. Melnick:

This e-mail is an attempt to meet and confer with you regarding Starbuzz Tobacco, Inc.'s ("Starbuzz") discovery requests served on you on or about June 6, 2016:

- 1) Requests for Admission, Set One ("RFA");
- 2) Requests for Production, Set One ("RFP"); and
- 3) Interrogatories, Set One ("ROG").

Starbuzz has not received any responses to those discovery requests, which were due on or before July 11, 2016.

Consequently, you have waived your right to raise objections to Starbuzz's RFPs and ROGs. *Barron Phillippe De Rothschild S.A. v. S. Rothschild & Co.* 16 USPQ2d 1466, 1467 n.5 (TTAB 1990). In addition, all responses to Starbuzz's RFAs are deemed admitted. Fed. R. Civ. P. 36(a)(3).

Please send us your responses to Starbuzz's RFPs and ROGs, without objection, by July 15, 2016. Otherwise, we will move forward with motions to compel.

Best Regards,

Daniel H. Ngai
The Patel Law Firm, P.C.
22952 Mill Creek Drive
Laguna Hills, California 92653
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This message may contain privileged and confidential information. If it has been sent to you in error, kindly advise me of the error and immediately delete the message.

From: Mark Uy
Sent: Monday, June 6, 2016 5:18 PM
To: philipmelnick@aol.com
Cc: Natu Patel <npatel@ThePatellLawFirm.com>; Mark Uy <muy@ThePatellLawFirm.com>; Daniel Ngai <dngai@ThePatellLawFirm.com>; Kunal Jain <kjain@ThePatellLawFirm.com>
Subject: Re: Starbuzz v. Melnick - RFP, RFA and Interrogatories

Dear Mr. Melnick:

Attached please find the following documents:

1. Starbuzz Tobacco's Requests for Production of Documents (Set One);
2. Starbuzz Tobacco's Interrogatories (Set One); and
3. Starbuzz Tobacco's Requests for Admission (Set One).

These documents were also served to you via mail today.

Should you have any questions, please do not hesitate to contact us.

Best Regards,

Mark Uy
Legal Assistant
The Patel Law Firm, P.C.
22952 Mill Creek Drive
Laguna Hills, California 92653
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